

# FINAL REPORT

PRIVATE SECTOR DEVELOPMENT OF HOUSING  
EASTERN EUROPE

## CONSTRUCTION BONDING AND WARRANTY REPORT

Prepared for

United States Agency for International Development  
Bureau for Private Enterprise  
Office of Housing and Urban Programs

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## EXECUTIVE SUMMARY

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This report is a comparative analysis of the law and practice regarding construction security and construction warranty liability in Hungary, Germany, France, Britain and the United States. It is the product of a review of the laws of the relevant countries, a survey of widely used contracts, and interviews with legal, industry and government leaders.

This report has the following objectives: (1) to summarize the current state of Hungarian law with respect to construction security and construction warranty liability; (2) to compare Hungarian law and practice with that of the other countries included in the study; (3) to assess the need for modification of current Hungarian law and practice; and (4) to promote a dialogue among interested parties in the construction industry aimed at reaching a consensus on how to solve perceived problems in Hungarian law.

Interviews with Hungarian government and industry leaders, as well as a roundtable discussion were conducted in September 1993, and were essential in forming a complete understanding of current Hungarian practice (and its relationship to current law) and in identifying the areas in which present Hungarian law could be improved.

The comparative analysis approach was chosen for this project based on a desire to understand whether developed market economies solve the issues discussed in fundamentally the same way or whether each country has crafted its own unique solutions. It is clear from this study that there is wide variety in the practices of the countries concerned, presenting a wide variety of options as models for the Hungarian situation.

As part of the transformation of the Hungarian economy, the economic organization of the construction industry which existed during the socialist era has given way, and the industry has moved quickly toward a market organization. One of the consequences of the rapid change in the construction industry has been limited adoption of Western European security and bonding techniques. Largely as a result of the entrance of Western European interests into the Hungarian construction industry (as owners, lenders and contractors), construction security, in the form of unconditional bank guaranties of a small portion of the contract price, is becoming quite common at some stages of the construction process among private contractors. Construction security has become more widely used in government projects.

The Hungarian government has prepared a draft set of contracting regulations applicable to public procurement, although further work on the draft currently has been postponed pending upcoming elections. The preparers of this report are hopeful that, when the process of formulation of such regulations resumes, some of the recommendations set forth will be helpful. This report has been made available to the Hungarian Ministry of Finances and Ministry of Industry and Trade, both of which are participating in preparation of such regulations.

We have made the following recommendations:

2. As a general matter, consideration should be given to promoting issuance of construction security of all types (tender, performance and construction warranty period security) by

companies other than banks (insurance companies or specialized bonding companies). This is because Hungarian banks have so far been unwilling participants in the construction security process and do not appear willing to allocate the resources necessary to participate effectively in granting construction security. Therefore, it may in fact be better simply to bypass them.

4. Training should be furnished to the institutions issuing construction security (whether specialized institutions or banks) to promote better understanding of the function of such security in the construction financing process is better understood and availability of such security.
6. In public contracting, the institution of a very low tender security requirement should be considered, with the flexibility to increase the amount of the security when appropriate to safeguard the public interest.
8. Delivery of performance security by contractors should be encouraged, but only made compulsory in residential housing projects, not in commercial construction projects.
10. It was apparent in interviews that residential housing contractors and homeowners alike face a serious problem relating to warranty repairs, arising from the relatively frequent failure of materials suppliers in Hungary. When a supplier of building materials fails, the contractor or homeowner is left with the cost of performance of warranty work. As a partial solution to this problem, consideration should be given to instituting a fund, through compulsory contributions by construction contractors and suppliers of construction materials, that would be used to meet the claims of residential home developers and owners when contractors or suppliers are unable to meet their obligations under warranty.
12. Finally, the report suggests that it would be worthwhile to begin a dialogue to examine appropriate revisions to the scheme for construction security to take into account the recommendations raised herein.

# **LEGAL SECTION OF WARRANTY AND BONDING NEEDS ASSESSMENT: HUNGARY**

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## **2 Introduction**

### **2.2 Objectives of this Report**

The objectives of this report are (1) to summarize the current state of Hungarian law and practice with respect to bonding and warranty arrangements in construction contracts; (2) to compare such law and practice with that of the US and certain European countries; and (3) to assess the need for revisions in Hungarian law in the areas covered and suggest a strategy for formulating and implementing such revisions.

With respect to bonding, the report focuses on requirements established by law or practice for delivery by construction contractors of bonds or other security arrangements in which a third party (a bank or insurance company) assumes liability for payment or performance in the event of a default by the construction contractor. Tender, performance, subcontractor payment and warranty period defect bonds are included.

In the warranty area, the report includes a description law and practice regarding procedures for acceptance of works as well as any legally imposed warranties.

The countries chosen for comparative study in this report are the United States, the United Kingdom, Germany and France. This selection is intended to give a perspective on the most influential European systems. This selection includes two countries from the “common law” tradition (United States and United Kingdom) and two from the “civil law” tradition (France and Germany). Certain relevant aspects of each legal tradition are described in Section 3 of the report.

In addition to different legal traditions, it is clear from this report that each country concerned has diverse traditions in construction law and practice. The laws and practice of the United States, particularly in the bonding area, are very different from those in Europe. There is also wide divergence between the United Kingdom and the continental countries chosen. This divergence was cited by European industry specialists contacted in preparing this report as the main reason that there has not yet been a European Community Directive concerning the areas covered by this report (see discussion in Section 3 below). This divergence suggests that law and practice in the areas concerned is heavily influenced by local economic conditions and traditions. This conclusion, in itself, is of fundamental importance in assessing Hungary's needs for revisions to its laws regarding bonding and warranty and possible models for meeting those needs: no realistic proposals regarding revision to Hungarian law can be made without taking into account the state of the Hungarian construction industry and its financial institutions, as well as Hungarian economic conditions generally. Hungary's economy is in transition between a socialist and a market economy and the construction industry remains burdened by certain vestiges of the socialist economy. This report includes a general description of the situation of the Hungarian construction industry.

Finally, in discussions regarding this report, the Hungarian Ministry of Industry and Trade expressed particular interest in the United States bonding model, under which a third party surety (often an insurance company) can accept responsibility for completion of a project and (to a limited extent) for performance of warranty work in the event of failure of a builder or developer to perform. This solution has particular appeal in light of the general weakness of the construction industry, since construction companies are relatively more likely to fail and disappear in Hungary than companies in a stronger economy. For this reason, notwithstanding the fact that the US model is unique, we have included in this report a more lengthy section on this model than might otherwise have been the case.

## **2.4 Method of Presenting Information**

The information in this report is organized into two broad topics; (1) security and bonding in construction contracting, and (2) defects liability. Each major topic is divided into substantive areas of concern (e.g., the bonding section discusses tender bonds, performance bonds, subcontractor payment bonds), and a description of Hungarian practice and comparative description of US and European practice is presented for each substantive area. Then, for each substantive area, the report presents comments concerning the general assessment of industry and government representatives of the current state of Hungarian law and practice, and comments concerning any perceived need for revisions to Hungarian law.

## **2.6 Sources of Information**

This report has been prepared by the persons listed in Exhibit A. These include American attorneys with construction and general commercial law experience in Hungary, France and the United States, a Hungarian attorney experienced in construction contracting matters, and a consultant specialized in the construction field. The preparers performed research in primary and secondary sources concerning the law of the countries concerned (i.e., review of legislation and commentary concerning such legislation by practitioners), interviews with specialized European and Hungarian lawyers, (both private practitioners and in house counsel), and interviews with industry executives. A Table of Authorities, including publications received and persons interviewed is attached as Exhibit B.

## **2.8 Terms Used in this Report**

In order to facilitate presentation of the information contained in this report, we have used the following terms in the ways described below:

“Owner” will mean the entity for whom a building is constructed or the entity responsible for representing the ultimate beneficiary of the work, such as a construction manager.

“Contractor” will mean the general contractor responsible by contract to the owner for the construction of the work.

“Subcontractor” will mean any entity which performs a portion of the work pursuant to a contract with the contractor.



“Supplier” will mean any entity which sells or otherwise supplies goods to the contractor or subcontractors.

“Surety” will mean any third-party issuer of security.

“Security” will mean any bond, bank guaranty, letter of credit, or other instrument issued to induce the owner to enter into the construction contract with the contractor. Security will also mean any retention by the owner of funds duly payable under the contract price where such retention is held to ensure the contractor's performance of the contract.

In addition to these terms, we will use the term “acceptance” as a generic term for the point at which the owner agrees to assume control of and responsibility for the works and makes some kind of satisfactory evaluation of the contractor's performance of the contract. The technical term in each language for “acceptance” is as follows:

Hungarian: *átadás átvétel*

German : *Abnahme*

French : *réception*

US/UK : substantial completion or practical completion

## **2.10 Issues Not Discussed in this Report**

This report has been prepared as a general review of law and practice in the construction security and warranty areas. We do not attempt to represent the interests of any single industry segment, nor do we concentrate on or further any single policy objective. As a result, certain issues that are tangentially related to the topic have not been discussed, such as the need in Hungary for comprehensive set of government (state and local) procurement regulations.

Construction projects in the United States and the European Community rely heavily on credit, and one of the fundamental problems in the construction industry in Hungary raised consistently by industry specialists is the general weakness of, and current lack of construction finance experience in, the banking industry (see Section 4 regarding the Hungarian economy). Certain legal measures could be taken to facilitate asset based lending generally which would in turn facilitate construction finance (such as reinforcement of legislation relating to collateral security arrangements), but these are also beyond the scope of this report.

Finally, we do not address in this report issues relating to statutory or contractual requirements that the contractor obtain insurance covering liability during the construction process. In some countries (in particular, France) insurance serves as an adjunct to liability and security practice.

## **4 Existing Hungarian Law**

### **4.2 Sources and Limitations**

In preparing this report, we referred to numerous sources to determine the present state of Hungarian law. For the reader's convenience, we set forth in this section the primary sources of Hungarian law referenced in this report.

Since construction security is generally unregulated by Hungarian law, we referred only to the Hungarian Civil Code to describe general principles of surety law.

In determining the present law on defects liability, the inquiry also begins with the Hungarian Civil Code. Chapter XXXV (Contract for Work), Chapter XXV (Breach of Contract), Chapter XXIII (Collateral Obligations Securing the Contract) and Chapter XXIX (Tort Liability) are of particular relevance. Joint Ministerial Decree No. 11/1985 (VI.22.) establishes the warranty period for office, residential and community use facilities and Government Decree No. 53/1987 (X.24.) MT establishes the guaranty period for residential construction. Finally, Act X. of 1993 on Products Liability will be relevant beginning January 1, 1994.

#### **4.4 Present Legislative Proposals**

Currently, the Hungarian Ministry of Industry and Trade and the Ministry of Finances are involved in preparation of a new statute regarding public procurement. We have been informed that consideration of the statute is in an extremely preliminary stage and has been postponed pending upcoming legislative elections. We are making this report available to the Ministries involved and are hopeful that some of the analysis included in this report will be helpful in preparing such legislation.

## **6 A Comparative Law Note**

In order to understand and compare the various approaches to the issues discussed in this report, it is necessary to have some background concerning certain major structural differences in the legal systems of the countries mentioned.

First, it is important to make a distinction between civil law and common law countries. The countries of continental Europe (including Hungary, France and Germany) are civil law countries. England and most of the English-speaking world follow the common law tradition. While volumes have been written on the similarities and differences between the two systems, the most important distinction for purposes of this report is the importance of judicial decisions in the two traditions. In the common law system, the concept of "precedent" binds the common law judge, for the most part, to the decisions of his court or a superior court on any particular legal issue. Consequently, the courts essentially "make law" in areas which may have not been addressed by the legislature. Much of the law in the areas addressed in this report relating to the United States and the United Kingdom is the product of judicial decisions rather than statutes. Prior decisions in the civil law system are persuasive but not binding; although jurisprudence on a given matter is most often followed in practice, from a purely technical perspective, court decisions do not constitute a source of law in civil law countries. Another important distinction between the two systems for purposes of this report is that the law and practice in civil law countries tends to favor statutory rather than contractual solutions to problems, while the reverse is true in common law jurisdictions.

Second, in the United States the concept of federalism is of vital importance. The federal government has the authority to legislate in many areas of economic activity. However, where it has not exercised or may not exercise its authority, the individual states of the United States are free to establish their own legal principles. Further, even where the federal government has created law, the states are often free to extend or “flesh out” the principles contained in the federal law. The issues described in this report are almost always regulated by state law rather than federal law. Consequently, there is really no such thing as “American” law on these matters, only general principles common to the laws of each of the states.

Third, it is important to understand the role of the European Community (“EC”) in the legislative process of EC countries. The EC has the authority to pass “Directives” which the member states are (in theory) obliged to implement by passing legislation consistent with the Directive. In the absence of EC policy, the law of the member state controls the issue. This process is referred to as “transposition.” Until recently, it was clear that EC Directives had no independent legal force of their own. However, the European Court of Justice's *Francovich* decision in 1991 significantly strengthened a developing jurisprudence in favor of circumventing the transposition process and directly imputing rights to EC citizens based on EC Directives. There is no EC Directive which directly addresses the issues discussed in this report. This is the case in part because the present laws of the member states differ so significantly that consensus on a general “European” policy is difficult to achieve. Several Directives are tangentially relevant, however, and we will discuss them as applicable.

## **8 General Description of the Present State of the Hungarian Construction Industry**

Prior to the abandonment of the socialist system in 1989, the Hungarian construction industry was, for the most part, state-owned and operated. Both contractors and financing banks (to the extent they were involved) were state enterprises and most of the clients were either state agencies or state-owned enterprises. The legal and financial practices of the construction industry reflected the prevalence of state ownership. For example, the concept of tendering was virtually unknown. Construction security did not exist. The extension by banks of credit to parties in the construction industry was an expression of state policy rather than sound lending practice, and the same was true of the extension of trade credit between the other players in the industry. Only in the area of private residential construction was there any significant differentiation between the interests the parties to a construction project, but even in this segment heavy government subsidies and regulation distorted the functioning of the market.

Some Hungarian construction firms confronted the rules of the free market while working abroad during the socialist era. For example, in the 1970s, Hungarian firms were active in the Middle East. Many firms were also involved as manpower subcontractors for projects in Germany (there are only a few examples of Hungarian companies which had real construction responsibilities in their German contracts).

At present, the construction industry (and the Hungarian economy generally) is in transition, moving relatively quickly from the old centrally planned system to a free market system. The government eliminated price regulations in construction projects relatively early in

the economic transformation, and the industry was the first in Hungary to widely use the tendering process.

The Hungarian domestic construction market is characterized by several parallel trends which help understand the present situation. These are:

- General economic recession
- Disarray of the Hungarian banking system
- Decline in demand for construction services
- Dramatic increase in the number of construction firms
- Appearance of foreign companies in the industry

Each of these trends is more fully described in “The State of the Hungarian Construction Industry—a Brief Overview for the American Readers,” attached as Exhibit C to this report, but some general observations are provided below.

## **8.2 General Economic Recession**

The Hungarian economy is currently characterized by an inflation rate of approximately 23 percent, negative growth, and unemployment of about 13 percent. The country is saddled with a large foreign debt, much of which was incurred during the socialist era and the government is determined to meet all of its obligations under its loan agreements. The budget deficit will exceed US\$2 billion this year and is expected to be larger next year.

Many Hungarian business enterprises have lost their major markets as a result of the collapse of other economies in Eastern Europe and the former Soviet Union and the war in Yugoslavia, and this development has had a ripple effect throughout the economy. Some exporters have successfully re-oriented their activities to supplying the West, but many companies, whether or not they were export-oriented, have gone bankrupt as well.

## **8.4 Disarray in the Hungarian Banking System**

The Hungarian banking system has not performed well in the transition of the construction industry to a market economy. Because of the enormous load of bad debts which they inherited from the socialist system (which increased markedly upon the collapse of the Eastern markets) the Hungarian banks are reluctant to engage in construction financing, which they perceive as speculative. Monetary instability (that is, high inflation and interest rates and unpredictable currency developments) discourages the grant of long-term finance essential to the viability of the construction industry. For now, the banks are tending to fill their portfolios with high-yield, low-risk government bonds rather than construction ventures.

The willingness of the banks to enter into construction and mortgage finance is further hampered by unfavorable laws on real estate and pledge of collateral security. Hungarian banks suffer from a lack of experience in the fundamentals of such finance, including risk analysis and contractual models for lending. Even with the proper technology and technical expertise, construction financing is a risky endeavor in Hungary since neither the owner nor the contractor is likely to have much of a credit or operational history. At the present time, the Western banks

which have established branches in Hungary in the past few years have not filled the void left by the Hungarian banks.

Despite a general reluctance to enter this area of finance, the banks have responded to the demand for construction security. They now issue bank guarantees as a regular service to their construction industry clients.

### **8.6 Decline in Demand for Construction Services**

The government, which in the past was the principal consumer of construction services, has dramatically curtailed its demand for such services. This results from the combination of a decrease in available funds for construction and the reduction of the government's role in the economy generally as a result of the privatization process. The new housing market is in virtual collapse as a result of the reduction of state funds for the purpose. Moreover, in an uncertain economic environment owners are reluctant to undertake expensive, long-term commitments such as construction. The virtual unavailability of local construction financing further limits the number of new construction projects.

Some areas of construction are active, however. These include renovations, construction of offices and hotels, road construction and some construction of educational and administrative buildings for the government.

### **8.8 Dramatic Increase in the Number of Construction Firms**

The decrease in demand for construction services has occurred simultaneously with a dramatic increase in the number of enterprises involved in the industry. Foreign companies have appeared in recent years, and the number of Hungarian entrepreneurs has increased. One reason for this is that following the disintegration of some of the large construction companies, many small companies were created from their remains.

As a consequence of the paucity of demand and the oversupply of contractors, most segments of the construction market are "buyer's" markets. Thus, the contractor has a tremendous advantage in dealing with its subcontractors and suppliers.

### **8.10 Appearance of Foreign Companies in the Process**

The changes to the Hungarian construction industry occasioned by the increase of foreign contractors is very significant. In areas such as contract documentation, tendering and construction security, they have transformed the market by applying foreign practices in Hungary.

## **10 Security Arrangements in Construction Projects**

Any construction project is rife with risk to all the parties involved. For the owner, it often requires expenditure of significant funds and requires the owner to hire the services of and place its trust in numerous professional and building trade specialists. Successful completion of the project requires that the contractor remain solvent and capable of marshalling all the necessary forces. For the contractor, the owner's solvency is a major question. Unless the contractor

receives an advance payment, it will often incur significant start-up costs which will only be repaid if the owner remains solvent. The problem is exacerbated by the fact that the construction process is often lengthy and that the original financial position of the parties is subject to drastic change between commencement and completion.

To reduce the effects of the risks described above, parties in the construction process make use of surety arrangements. In these arrangements, the beneficiary has access to the funds (or performance capability) of a third party whose involvement will eliminate or lessen the risk of noncompliance by the contract partner. This section will discuss the types of surety arrangements available in Hungary, Europe and America, and will offer suggestions as to how the present Hungarian practice in the area could be improved.

## **10.2 Issuer of Security**

### **10.2.2 Present Hungarian Law and Practice**

Hungarian surety arrangements currently are usually established in the form of a bank guaranty. The major Hungarian banks and some of the new Western banks which have come to Hungary are active in the process. There are at present no legal restrictions on who may issue construction surety arrangements.

### **10.2.4 European and American Practice**

Like Hungary, conventional bank guaranties are the standard form of surety arrangements in continental European construction contracts. However, changes in capitalization rules for banks required by EC directives and an EC requirement to eliminate barriers to the entry of insurance companies into the construction surety business have resulted in the appearance of conditional surety arrangements. Insurance companies have captured a large market share in some countries, and American insurance companies such as American Insurance Group (AIG) have entered the market in Europe.

Banks are the principal issuers of construction security in Germany, but insurance companies are also active. There are no regulations as to who may issue construction security and no required forms or contractual terms.

In France, bank guarantees still predominate. France restricted issuance of construction surety arrangements to banks in the past, but at present there are no specific rules concerning who may issue construction surety.

In Britain and the United States, surety arrangements take the form of an indemnity bond. Standby letters of credit are also sometimes used.

In America, banks were forbidden by law to issue bonds in the construction process, so insurance and special bonding companies took the lead in this area. Construction bonding is a specialized sphere of credit activity in the United States and certain large insurance companies and construction bonding companies dominate this market. However, standby letters of credit issued by banks are now also used in the US.

CHART 5.1

Comparison of Types of Security

	Hungary	Germany	France	Great Britain	US
Who issues security?	bank	bank	bank	bank	insurance/ bonding company
What type of security is used?	bank guaranty	bank guaranty	bank guaranty	bank guaranty/ bond	indemnity bond

## **10.4 Types of Security Arrangements**

### **10.4.2 Bank Guaranty vs. Indemnity Bond**

The bank guaranty, which is the common form of security in civil law countries, is usually an unconditional obligation of a bank to a beneficiary which must be paid on the presentation by the beneficiary to the bank of certain documents. The bank is obligated only to pay money, and cannot choose or be required to perform what the contractor failed to perform in lieu of payment.

In the truest form of bank guaranty, the bank must pay under a guaranty upon presentation of a written demand. It may not raise any of the defenses of the party on whose behalf it issued the guaranty and may not request proof of the occurrence of the events which gave rise to the demand for payment. However, the bank may raise defenses to payment such as forgery or insufficiency of any documents required to be presented. The bank guaranty usually has a fixed term and maximum guaranteed amount expressed as a percentage of the contract price. Since the obligation of the guarantor is unconditional, the maximum amount of the obligation is usually a small portion of the contract price.

An indemnity bond issued in the UK or the US differs from a bank guaranty in several respects. First, an indemnity bond does not constitute an unconditional obligation to pay, and the issuer may refuse to honor a demand for payment for many reasons. The surety may raise any of the defenses available to the party whose breach is asserted. Also, unless the bond expressly allows for variation of the terms of the underlying contract, variation of any material terms of the contract without the issuer's consent will discharge the issuer. Second, concerning performance surety arrangements, the American indemnity bond differs from the bank guaranty in that the surety has the option to pay the sum guaranteed or perform the work in the place of the party for whom the surety arrangement was issued. Regardless of the form of surety arrangement used, the issuer will typically require the principal obligor to sign a "reimbursement agreement" under which the obligor will reimburse the surety in the event the surety pays under the instrument. The surety will generally require collateral security for the obligation to reimburse. Because of the difficulty in taking collateral security interests in property other than land under Hungarian law, only cash and mortgages are common forms of security in Hungary. Western legal systems generally facilitate the use of more types of property for security.



CHART 5.2.1

Bank Guaranties vs. Indemnity Bonds

	Bank Guaranty	Indemnity Bond
Type of obligation	payment only	payment or performance
Type of security	unconditional	conditional
May issuer assert defenses of contractor?	no	yes
Does variation of the construction contract discharge security?	response varies from country to country	yes (unless waived)
What are typical limits of issuer's financial liability?	1-5% for tender security 5-20% for performance security 5-10% for defects security	> 20% for tender security (US) up to 100% for performance security (US) 10-20% for performance security (GB) up to 50% for payment security (US)

#### **10.4.4 Recommendations Based on the Hungarian Context**

Although European practice overwhelmingly favors use of banks in issuance of bonds in construction projects, it is clear that certain conditions existing in the Hungarian economy militate in favor of promoting issuance of bonds by specialized institutions at least as a transitional measure. Hungarian banks do not have standard credit review practices and are in any event reluctant to lend to the construction industry. In interviews, construction industry specialists consistently expressed great frustration arising from their dealings with banks, and were not in favor of any solution that would increase the involvement of banks in the construction process. For these reasons, it would appear preferable either:

- to permit and promote issuance of indemnity bonds by insurance companies; or
- to institute a training program regarding issuance of such bonds to better familiarize banks with the role of such bonds in the construction process and the credit evaluation processes involved. Ideally, the banks (like insurance companies in the United States) might create specialized services to be involved in issuing bonds in the construction process. This might have the effect of provoking greater use of such instruments.

One method of promoting use of performance security would be to extend existing housing subsidy programs to cover in whole or in part the cost of creating security in residential construction projects. Such security could be issued by an institute similar to the existing Loan Security Institute created by the Hungarian State.

### **10.6 Types of Bonds**

#### **10.6.2 Tender Security or Bid Bond**

When a construction contract is awarded by means of a tender, the owner has an interest in knowing that the bidder actually intends and has the financial capacity to perform the contract. To this end, the owner will often require the bidder to post a bid bond or other tender security at the time of its bid. If the contractor's bid is accepted and the contractor refuses to sign the contract, or if the contractor fails to provide required subcontractor payment and performance bonds, the owner can recover from the bid bond surety or from the other tender security for the cost of granting the contract to a higher bidder. Moreover, if the contractor is able to post the requested surety arrangement, the owner can infer that the contractor has a certain degree of financial stability. In some countries, the owner can also infer that the contractor is committed to the project because it has expended time and money to secure the tender security.

#### **10.6.4 Performance Security**

After a construction contract has been awarded, the owner may seek assurances that it will be able to complete the job even if the contractor walks off the job or goes bankrupt. The owner typically requires a surety to issue an undertaking to compensate the owner (through payment or performance) for the failure of the contractor to perform. We will refer to this form of security as "performance security".

### **10.6.6 Subcontractor Payment Security**

In some countries, subcontractors, suppliers and laborers have statutory rights to ensure they receive payment from the general contractor. In these jurisdictions, the contractor must provide a surety arrangement which will meet the contractor's obligations to the subcontractors, suppliers and laborers if the contractor fails to do so. We will refer to this form of security as "subcontractor payment security".

### **10.6.8 Security for Repair of Defects**

Contractors in each of the countries surveyed are liable to the owner to complete or repair defects in their work for a period of time after acceptance of the work by the owner. To provide the owner with access to funds in case the contractor does not fulfil its obligations after acceptance, owners in some jurisdictions require security for this defects liability period. In addition to or as an alternative to a third party security, owners may retain a percentage of the invoices payable to the contractor and will release such retention only at the completion of the defects liability period. We will refer to both of these alternatives as post-acceptance security and will discuss their use in the section on defects liability below.

## **10.8 Laws and Practices Governing Tender Security**

### **10.8.2 Present Hungarian Law and Practice**

Apart from the general contract law principles of the Hungarian Civil Code, there are no statutes which regulate the form or legal effect of tender security. The Hungarian national government and local city (including Budapest) governments have promulgated statutes governing public tenders and privatization, but neither the national nor local statutes provide regulations concerning when they will require tender security in their projects or what form or amount the security should take. Consequently, the governments set requirements in these respects on an ad hoc basis. Similarly, there is no requirement of use of tender security in any sector of the industry, such as residential construction or public works.

We can only make a few general observations on general practice and use of tender security in Hungary today. When requested, the tender security is requested in the form of a bank guaranty. The amount of the tender security varies with the project and the owner's estimation of the potential harm which could befall it if the winning bidder does not sign the contract for the work. Tender security of 1 percent of the bid price is not uncommon. In the bidding for the Hungarian World Expo scheduled for 1996, the owner requested tender security of 5 percent of the bid price.

### **10.8.4 European and American Law and Practice**

Tender security is not widely used in Germany. It is not required in public contracts or any industry sector. There are no regulations concerning its form or content.

In France, bid bonds are rarely used. They are not required by law in public tenders, and are required in practice in public tenders only in special circumstances. There are no EC Directives concerning use or form of tender security in public contracts. One industry expert

interviewed speculated that, because of a boom in the construction sector in France which lasted until recently, owners rarely had cause to question the financial position of bidding contractors.

Tender security is also rarely used in Britain. As in France, there are no legal requirements for use of tender security in public contracts or any industry sector.

In the United States, tender security is usually required in sealed bid public contracts (i.e., contracts where the price is not negotiated) but is rarely used in private contracts. In construction contracts with the federal government, tender security is required when payment and performance bonds are required, which occurs when the contract price exceeds US\$25,000. The form is stipulated by law and the amount guaranteed will fluctuate from a minimum of 20 percent of the contract price to a maximum amount of US\$3 million. Similar rules apply in contracts with state governments.

There are no requirements in American law concerning the form of tender security for private contracts. Tender security arrangements are governed by general surety principles. There are no requirements for tender security in any type of private contract, but the American Institute of Architects has promulgated a form of tender security for general use.

The tender security is not unconditional. Most jurisdictions permit the surety to assert the defense that the contractor was mistaken in its bid preparation, but require a showing that the such mistake was not the result of the contractor's negligence. Since American tender security is often discharged on signing of the construction contract and presentation to the owner of the contractor's payment and performance surety, owners have on occasion tried to collect on the tender surety even where they have permitted the contractor to begin work without first providing the required payment and performance surety. State courts have typically discharged the surety in these cases on the grounds of waiver. In at least one state, the court has discharged the surety where the owner failed to follow its own award procedures in the tender process. The surety can also refuse payment if the demand fails to meet the requirements of the surety documents or if there is fraud or misrepresentation in the demand.

# CHART 5.4

## Tender Security

	Hungary	Germany	France	Great Britain	US
Is it widely used?	yes	no	no	no	in public contracts
Is it ever required by law in public contracts?	no	no	no	no	yes
Is it required by law in any industry sector?	no	no	no	no	no
Amount guaranteed	1-5%	N/A	N/A	N/A	at least 20% to maximum of US\$ 3 million in public contracts
Bank guaranty or bond	Bank Guaranty	N/A	N/A	N/A	bond

### **10.8.6 Recommendations Based on the Hungarian Context**

There seems to be no compelling reason for instituting a legal requirement for tender security in private construction contracts. In each of the legal models examined, private parties were entitled to define the terms on which they wished to contract.

In public contracts, tender security has the function of eliminating frivolous tenders or tenders from companies which may not have the financial wherewithal ultimately to perform. To this extent, institution of a tender requirement could further an objective of ensuring that the tender process is not subverted. On the other hand, institution of a tender security requirement could tend to be advantageous to larger companies in the construction industry (which would have a greater capacity to obtain such security). Under current economic conditions, this would tend to favor foreign contractors. For this reason, we would propose instituting in the new public procurement legislation being formulated in Hungary a tender security requirement of a low amount (e.g., either a low lump sum amount or a percentage that would be 1 percent or less of the bid price) but with the possibility of increasing the amount when additional security is required to safeguard the public interest.

## **10.10 Laws and Practices Governing Performance Security**

### **10.10.2 Present Hungarian Law and Practice**

The legal framework concerning performance security in Hungary (form of the security, interpretation of contracts and rules concerning its use) is similar to that described for tender security. There is no legal requirement of performance security, although it is required quite often as a matter of practice. Two types of performance surety are used in Hungarian practice, and they are often both required in a project. The first is referred to as a “completion bond,” and covers the circumstance when the contractor walks off the job or goes bankrupt. The completion bond is typically a bank guaranty of 5 percent of the contract price.

The second type is referred to as a “performance bond.” This security, which is valid from the date of signing until acceptance, is also typically a 5 percent bank guaranty and concerns defects which arise during the construction process. The owner will either require the contractor to repair the discovered defect or let it continue until acceptance. If the owner allows the defect to continue until acceptance, the owner will inform the contractor of the defect at acceptance and will either reduce the contract price or pay the full contract price and draw the cost of repair from the performance bond.

The surety often issues a single bank guaranty which covers the completion bond and the performance bond. Based upon interviews with Hungarian construction contractors and project managers, the delivery of a bank guaranty as surety is required only in larger contracts. The results, in part, from the fact that Hungarian construction companies very often have difficulty demonstrating sufficient credit worthiness to obtain such bonds. This is often due to the lack of sufficient credit history, or in some cases, business experience in the industry, which is made up of either new companies or reorganized state owned enterprises. Moreover, in light of the high risks involved in such bonding in Hungary, Hungarian banks tend to charge much more for issuing such guaranties than is commonly the case in Europe or the United States. Rates may be as high as 5-10 percent of the amount guaranteed. These costs are passed through to the owner,

and may make requirement of a bond uneconomical. As a result, it is common for the sole security for performance to be a “retention” amount, that is, an amount retained by the owner from each invoice paid to the contractor. Typically, 10 percent will be retained, with 5 percent being released at the time of acceptance, with the remainder being paid upon completion or repair of any incomplete or defective items identified at the time of acceptance. As indicated in Section 6.2.3 below, the second 5 percent tranche is in some cases released only after expiration of the warranty period.

#### **10.10.4 European and American Law and Practice**

Performance security is not required by law, but is widely required in practice in public contracting in most EC countries, and it is widely used in the private context as well. The EC proposed a requirement of a performance security equal to 15 percent of the contract price in all public contracts of the member states (the proposal did not specify whether the security should take the form of a bond or bank guaranty), but the proposal never materialized into a Directive.

The German Manual for Public Offerings (*Vergabehandbuch für öffentliche Ausschreibungen*) which is not a statute but a policy manual used in government procurement, requires the contractor to post a 5 percent performance guaranty. At acceptance, the guaranty is reduced to 2 percent and remains in place until the expiration of the defects liability period. Performance bonds are not required in any industry sector and are less common in private contracts (where retentions often serve as the only security). When used, they can cover 10-20 percent of the contract price. The cost of performance security is typically 0.5-2 percent of the amount guaranteed. No form of performance security is stipulated by law, but most forms include a waiver by the bank of its right to refuse payment until the owner obtains a judgment against the contractor.

There is no requirement of performance security in French public contracts. The only performance security required in residential construction in France is security which must be delivered by a developer of property to the contractor to assure that payments made by the ultimate owners to the developer will be available for payment of the contractor. Performance surety is widely used in private contracts and it typically covers 5-10 percent of the contract price.

In Britain, the performance security is often in the form of an indemnity bond. As indicated above, the obligation to pay under such indemnity bonds is conditional. Depending on the form of the bond, the surety will have the option to pay or perform the contract. In the most widely-used form contract for civil works, the amount of the bond cannot exceed 10 percent of the contract price. The surety is discharged if (1) the contractor in fact performs all obligations set forth in the construction contract; (2) the surety pays the full amount of the bond; or (3) the engineer/architect issues a certificate which states that all defects which existed at “substantial completion” (see discussion of Acceptance below) are corrected or waived.

Performance bonds are widely used in Britain and are required in most public contracts. The forms of the bonds and their terms are not stipulated by law.

American performance security typically takes the form of an indemnity bond under which the surety has the option to pay or perform. The American Institute of Architects form contracts state that the parties may agree to use performance security, but do not require it or suggest its scope. Performance security is widely used in the United States and it is not uncommon for the surety to cover 100 percent of the contract price.

The American Institute of Architects form performance bonds require the owner to notify the contractor and the surety of a contractor default and schedule a conference. Following the conference, if liability is established, the surety has the right to (1) complete the contract in accordance with its terms, for which the owner will pay the original contract price and the surety will pay the excess, up to the maximum bonded amount, (2) fund the contractor so that it may complete the contract, up to the maximum bonded amount, (3) bid out the work and make funds available for the work of the new contractor so that the owner pays the original contract price and the surety pays any excess, up to the maximum bonded amount, or (4) immediately make a damage payment to the owner. The surety will be liable for delay costs and legal and design costs resulting from the contractor's default, and any liquidated damages, up to the maximum bonded amount. The bond includes a requirement that any suit on the bond must be brought within 2 years of the date that final payment under the original contract falls due. The surety waives its right to notice of alterations or extensions of time or other changes under the construction contract. (AIA Forms A311 (1970) and A312 (1984)). Attached to this report as Exhibit D are sample forms of performance bonds from the American Institute of Architects.

The form and legal effect of performance security are governed by general surety principles and, concerning contracts with federal and state governments, the relevant acquisition regulations. Performance security is required in all fixed price construction contracts with the federal government where the price of the contract exceeds \$25,000. By law, the bond is for 100 percent of the contract price, except where the contracting officer determines a lesser amount is acceptable. The surety may always make the payment in federal contracts, but does not always have the right to perform in lieu of payment. If the surety is permitted to perform the contract, it may do so either by assuming the contractor's agreement through a formal takeover agreement, or it may simply fund the defaulting contractor so that it may complete the job. If the surety executes a takeover agreement, the surety stands in the shoes of the contractor and may pursue claims under the original contract. If it simply funds the contractor, it only has the right to claim under the equitable doctrine of subrogation for the balance owed the contractor under the contract. In the funding situation, claims for changes and extra work on the contract must be submitted in the name of the contractor.



CHART 5.5

Performance Security

	Hungary	Germany	France	Great Britain	US
Is it widely used?	yes	public contracts	yes	yes	yes
Is it ever required by law in public contracts?	no	yes	no	yes	yes
Is it ever required by law in any industry sector?	no	no	residential	no	no
Discharged at acceptance?	yes	yes	yes	varies	varies
Amount guaranteed	5-10%	5% in public contracts, up to 20% in private contracts		10-20%	100%
Bank guaranty or bond	Bank Guaranty	Bank Guaranty	Bank Guaranty	<b>Conditional</b> Bank Guaranty	bond

#### **10.10.6 Recommendations Based on the Hungarian Context**

Reinforcing the use of performance security in Hungary would further the objective of instituting greater certainty of final performance of construction contracts. In commercial development projects, the owner can be expected to have sufficient commercial experience and sophistication either to require performance security if deemed necessary or accept the risks involved in not requiring such security. Therefore, in commercial construction we would recommend that no statutory requirement of performance security be imposed, and that the parties be left to require such security if they deem necessary.

However, the situation regarding residential construction would appear to require different treatment. Based upon interviews with industry representatives, defaults in completion of projects, and especially in performance of post completion warranties (which will be discussed below) are an enormous source of liability in the residential construction field. This liability often falls on developers or the general contractor, because he is often unable to shift liability to subcontractors or materials suppliers. The scope of this problem appears far larger in Hungary than in other countries, apparently due to the difficulties construction companies are having due to the economic upheavals associated with transformation into a market economy.

Although it is possible to argue that residential developers should be treated no differently than commercial developers (because they have similar levels of experience), there is in fact a difference deriving from their spheres of activity; the consequences of failure to complete a project or to perform warranty work on residential property may ultimately fall on the buyer or, if they are borne by the contractor they will negatively impact the supply of residential housing, which is already relatively scarce in this market. For this reason, we believe a distinction should be drawn between commercial and residential developers.

In light of the peculiar conditions of the Hungarian residential construction industry (financial weakness of builders, the need to promote construction to meet high demand) we believe a statutory performance security requirement may be appropriate in the Hungarian residential construction context. The nature of the security (bank guarantee or indemnity bond) and its amount would need to be set in a consultation with industry representatives. However, as indicated in Section 4.2 above, there are considerations which militate in favor of issuance of bonds by specialized insurance or surety companies.

### **10.12 Laws and Practices Governing Subcontractor Payment Security**

#### **10.12.2 Present Hungarian Law and Practice**

Under Hungarian law, the subcontractor or supplier has no privity, and thus no rights, against the owner in the event of nonpayment by the contractor. Therefore, except to the extent that it affects performance under the contract, the owner has no interest in whether the subcontractors and suppliers are paid and construction contracts are silent on the matter. In the present oversupply situation for construction services, subcontractors and suppliers generally do not have the negotiating power to demand any form of payment surety from the contractor. However, we did see one contract between an owner and contractor in which the contractor agreed to assign its rights to certain payments under the general contract to the subcontractor.

The area is not regulated by Hungarian law and subcontractor payment security is not used in practice.

#### **10.12.4 European and American Law and Practice**

In most European countries (except France), there are no statutory payment protections for subcontractors and suppliers. There are no EC Directives concerning payment security.

As in Hungary, subcontractors and suppliers generally have no legal rights against the owner in Germany. Construction contracts contain no requirement of third-party security for the benefit of the subcontractor or supplier, and subcontractor payment security is not required or used in public contracts.

In France, a 1975 statute requires that a contractor must provide a subcontractor payment security to its subcontractor for the full subcontract price. This requirement applies only to private contracts. (In public contracts, subcontractors are paid directly by the owner.) The requirement of the law is not waiveable, but according to industry sources, in practice, the negotiating position of the subcontractor is so weak vis-a-vis the contractor that the requirement of the security is widely disregarded. Subcontractors have legal remedies against contractors for failure to provide the security, but they risk being "blacklisted" by other general contractors for enforcing those rights.

Absent a specific agreement, there is no privity of contract between the British owner and the subcontractor. A subcontractor also has no lien on the money payable to the contractor by the owner for the price of goods supplied by the subcontractor the title of which has passed to the contractor. British standard form construction contracts between the owner and contractor do not mention subcontractor payment security and it is not required by law in any context.

Central to understanding the American approach to subcontractor payment security is the concept of the mechanics' lien. A mechanics' lien is a claim created by state statute for the purpose of securing priority of payment of the price or value of work performed and materials furnished in erecting or repairing a building or other structure, and as such attaches to the land as well as buildings and improvements erected thereon. Such a lien covers suppliers, contractors, subcontractors and laborers for improvements to which they contribute. Since the owner's property is at risk if the contractor fails to pay its subcontractors, laborers or suppliers, the owner often requires the contractor to obtain a payment bond for the project. The amount of the bond is a subject of negotiation, but is sometimes equal to 100 percent of the contract price. American form contracts do not require the use of a payment bond, but it is recognized as an option in the contract.

The American Institute of Architects form payment bonds limit the liability of the surety to claims asserted by first and second-tier suppliers and subcontractors. The surety agrees to pay any rightful claimant if the eligible subcontractor, supplier or laborer has not been paid within 90 days of the date of its work was completed or material was furnished. The bond specifies the demand process which the claimant must follow and ends the period for making claims on the date which is one year from the date the contractor ceases work. The surety waives notice to any

changes in the construction contract. The bond is discharged upon full payment to all rightful claimants. (AIA Forms A311 (1970) and A312 (1984))

The form and legal effect of subcontractor payment security are governed by general surety principles and, in the case of contracts with federal and state governments, the relevant acquisition regulations. Mechanics' liens do not arise against the government in its capacity as an owner because the law prohibits the granting of a lien on any federal or state land. However, both federal and state law require contractors to issue payment bonds because of a perceived need by the government to grant a measure of protection to subcontractors, suppliers and laborers and to assure that they will be in no worse position under a state contract than if the contract were with a private owner.

Payment bonds are required on Federal construction contracts in an amount of 50 percent of the price of contracts of not more than 1,000,000, 40 percent of the price of contracts of more than \$1,000,000 and less than \$5,000,000, and \$2,500,000 if the contract price exceeds \$5,000,000. First tier subcontractors of the contractor, laborers of the contractor, and suppliers of the contractor, and suppliers to and laborers of first tier subcontractors may make claims under such payment bonds if they are not paid as required by their contracts. Suit must be brought against the surety in Federal Court. The unpaid party can recover what is due him under his contract although the total surety liability to all claimants is limited to the amount of the bond. If the suit is by a laborer or supplier to a first tier subcontractor, notice of the claim must be presented to the prime contractor within 90 days of the claimant's completion of work or supply of materials and suit must be brought against the surety after that 90 day period and within one year of the claimant's completion of work or supply of materials. There is no notice requirement with respect to claims arising out of the failure of the prime contractor to pay, and suits based on such failure must be brought within one year of the claimant's completion of work or supply of materials. Many state and local governments have similar statutes applicable to their construction contracts. Attached as Exhibit E are forms of payment bonds promulgated by the American Association of Architects.

CHART 5.6

Subcontractor Payment Security

	Hungary	Germany	France	Great Britain	US
Is it widely used?	no	no	no	no	yes
Is there a legal right of the subcontractor to payment?	no	no	yes	no	yes
Is it required in public contracts?	no	no	no, direct payment by owner in public contracts	no	yes
What is typical amount guaranteed?	N/A	N/A	100%	N/A	50%

### **10.12.6 Recommendations Based on the Hungarian Context**

Subcontractor payment security primarily reinforces the position of subcontractors in relations with prime contractors. This in turn adds security to the construction project as a whole. However, neither the industry representatives we met nor the Ministry of Industry and Trade raised payment of subcontractors as being a problem in the construction process in Hungary. None of the countries surveyed except France have legal requirement of subcontractor payment, and the law in France seems to be avoided in practice and therefore ineffective. We see no pressing need for institution of payment security in Hungary.

## **12 Liability for Defects in the Work**

### **12.2 General Introduction**

As part of the construction process in all developed countries, the contractor is required to warrant his work against defects. Whether the warranty arises from a statute or the contract between the parties varies from country to country, as do the timing and scope and the procedural aspects of the warranty.

The concept of **acceptance** of the work is central to the defects liability issue. While national variations on the definition of acceptance exist, there comes a point in each construction contract in every country where the contractor states that the work is complete (or “substantially complete”) and the owner accepts the work as complete (or “substantially complete”). At this point, the owner usually takes control of the site and responsibility for damage and injuries at the site, the contractor is released from its liability insurance requirements, bonds, guaranties and retention monies may be released, etc. Also, the period of liability for defects in the work typically begins.

### **12.4 Present Hungarian Law and Practice**

#### **12.4.2 Acceptance of Work**

##### **Definition of Acceptance**

There is no affirmative definition of “acceptance” in Hungarian law. However, if the contractor begins the acceptance process, the owner may not refuse the “handing over and taking over” (*átadás át vétel*) of the work on the basis of minor deficiencies which do not hinder the usage of the work. If the owner takes over parts of the work before the point at which acceptance would otherwise occur, all risks concerning that portion of the work pass to the owner. The parties are free to modify these requirements in their contract.

##### **Procedure for Acceptance**

The contractor begins the acceptance process by sending a notice to the owner which establishes a date for acceptance. On the fixed date for acceptance, the parties meet and make a record of the remaining defects and deficiencies, the portion of the contract price allocated for completion, and the guaranties which will apply after completion. The process involves an inspection by the owner and assumes that the parties have jointly performed tests which are customary for the type of works involved. These requirements are established by law but may be varied by the parties. For residential construction, all repairs must be completed within 30 days.

### **Consequence of Acceptance**

Under Hungarian law, the defects liability period begins at the time of “handing-over and taking-over.”

#### **12.4.4 Liability of the Contractor for Defects**

##### **The Legal Basis for Defects Liability**

Defects liability arises under Hungarian law from two primary sources: (1) from a **warranty** which is implied in any contract classified as a “work contract” (*Vállalkozási szerződés*) and (2) from a specific **guaranty** set forth in a government decree relating to residential construction (the scope of each is described below). The parties are free to expand the scope of the contractor's liability and the duration of the liability by the terms of their contract, but the warranty and guaranty referred to above may not be curtailed. Based on interviews conducted with industry representatives for this report, we conclude that expansion of the duration and scope of the contractor's liability is sometimes, but not necessarily frequently, negotiated as part of the contract process.

##### **The Scope and Duration of Liability**

All construction contracts are classified under the Hungarian civil law system as “work contracts.” As such, the contractor is required to achieve a result, and its failure to achieve the result is a breach of a “warranty of perfect performance” (*szavatosság*) implied in all work contracts. To use an example in the construction context, if the owner and contractor sign an agreement for the construction of a staircase, and the staircase collapses after the owner's acceptance of the staircase due to the faulty workmanship of the contractor, then the contractor will be deemed to have breached the perfect performance warranty of the work contract even if the contract includes no warranties concerning defects.

In addition to the warranty of perfect performance under the work contract, Hungarian law establishes a guaranty (*jótállás*) concerning defects liability in residential housing. The parties are also free to agree to other guarantees in the contract, and a one-year guaranty against all defects is common. The difference between the warranty liability and the guaranty liability is in the burden of proof. In a lawsuit for breach of warranty, the burden is on the owner to prove that the defect existed at the time of acceptance. In a guaranty suit, the defect is presumed to have existed at the time of acceptance and the contractor must prove that the cause of the defect occurred later and independent of its responsibilities. The statutory guaranty for residential construction is based on a policy of protecting residential owners.

The warranty and guaranty liabilities of the contractor begin at the time of acceptance. As a general rule, the Civil Code construes a warranty period for durable goods (including construction works) of three years. Specific laws or decrees can increase (but not decrease) this period, and a 1985 Joint Decree of certain ministries states that, with respect to office buildings and buildings for residential or community use, a warranty period of ten years for structural components (and materials) and five years for fixtures (and materials) shall apply. The statutory guaranty applicable to residential construction has a term of three years.

Both the warranty and the guaranty cover all work of the contractor and its subcontractors. The contractor has breached its warranty or guaranty if its work is not in conformity with contract specifications or applicable law or if the work fails the fitness tests required by law.

If the contractor failed to act "in a way which could be generally expected in the given situation," the owner may also be entitled to damages (including lost profits) and an indemnity for liability to third parties. A Government Decree which is applicable only to contracts between Hungarian companies stipulates a penalty to be paid (unless the parties have agreed otherwise) in the case of a failure as described in the preceding sentence. Beginning in October 1993, this rule applies to all contracts.

The contractor will generally have recourse against its subcontractors and suppliers if they are ultimately responsible for the breach of the warranty or guaranty. In October of 1993, Section 398 of the Civil Code was modified to provide that the liability of a subcontractor or supplier to the contractor is now concurrent with the contractor's liability to the owner. This provision does not distinguish between warranty and guaranty liability, and is generally an improvement over the prior law. However, it produces one unfortunate result in that it does not limit the concurrent running of the subcontractor's or supplier's liability to the statutory liability periods. Thus, if the contractor agrees to a guaranty or warranty period with the owner which is longer than the statutory minimum, the subcontractor or supplier will be similarly bound to the contractor (even though the subcontractor or supplier had no opportunity to participate in the warranty or guaranty negotiations.)

Hungarian tort law, and not the warranty and guaranty principles, is applicable in the allocation of liability for damage to third persons or property as a result of the contractor's actions.

It is also important to note that, except when the first owner is a developer, the defects liability of the builder does not transfer from the original owner to a new owner on a sale of the property. The new owner may only assert its claim through the privity which existed between the contractor and the original owner. The legal situation when a developer "accepts" residential property which it then resells is somewhat ambiguous. The law clearly provides that the guaranty liability runs to the builder, which would suggest that a residential developer which did not build housing might not be liable. However, Hungarian jurisprudence has held that guaranty liability runs to the builder and the developer jointly. That is, the ultimate purchaser of residential property has recourse against the developer for defects covered by the guaranty. Moreover, based upon this principle, the date of commencement of the guaranty period has been found to be the date of sale by the developer to the ultimate purchaser rather than the date of acceptance by the developer from the builder. These decisions are based upon a policy of protecting purchasers of residential property, who may not have any privity with, or even know the identity of, the builder of residential property.



### **Procedural Rules for Enforcement**

As stated above, in a warranty claim the owner must prove that there was a defect (as set forth in the law or the contract) and that the defect existed at the time of the acceptance. Warranty liability must be enforced within six months of acceptance (if a defect was apparent at the time of acceptance) or within three months from the time a defect became apparent. In some circumstances, an impediment to enforcing a claim may be recognized as legally sufficient to toll the running of the time frames for presentation of a claim, and in such cases a claim must be brought within three months of removal of the impediment. As defenses to a warranty claim, the contractor may assert the fact that the owner was aware of the defect at the time of conclusion of the construction contract, or, under recent jurisprudence, at the time of acceptance, and failed to object to the defect.

In a suit under the guaranty of residential construction or any contractual guaranty, the court presumes that the defect existed at the time of acceptance. The contractor may rebut the presumption by proving that there was no defect at the time of acceptance. There is no legally required level of proof (such as “preponderance of the evidence” or “beyond a reasonable doubt”) in Hungarian civil procedure; the judge is mandated to consider all the evidence and make a decision using his own discretion.

If the contractor breaches its warranty or guaranty, under the Hungarian Civil Code it must repair the damage or, in some cases, replace the damaged element. The owner also has the option to subtract the repair cost from the contract price payable and, in some cases, may terminate the contract.

#### **12.4.6 Security for Defects Liability Obligations**

As discussed above, acceptance of the work typically commences the defects liability period under Hungarian law. Owners sometimes require the contractor to provide a bank guaranty as additional security that the contractor will honor its obligations during the defects liability period. Alternately, the contract includes a retention provision of the type described under Section 5.2 above. Under the retention system, if the contractor does not honor its obligations during the defects liability period, the owner may arrange for the repair and deduct the cost from the retention amount. The existence of a bank guaranty or retention does not limit the owner's recourse to the contractor if the amount of the contractor's obligation to the owner exceeds the guaranteed or retained amount.

The defects guaranty or retention is typically equal to 5 percent of the contract price. When required, bank guaranties are most often issued for a period of one year, but three-year guaranties (which cover the entire defects liability period for construction other than construction for office, residential or community use) are becoming common. A retention period equal to one year, or in residential construction, the three-year term of the guaranty, is common.

The cost of a bank guaranty to the contractor often influences the decision whether to use a bank guaranty or retention. It is not uncommon for the cost of a guaranty to equal 5 percent to 10 percent of the guaranteed portion of the contract price (that is, 5 percent to 10 percent of 5

percent) which may make it uneconomical for the transaction. In such a case, the parties are likely to use retention.

In public tenders and civil works contracts, the owner often provides a form of guaranty which the contractor must use. The payment obligation of the bank is typically unconditional upon presentation of a claim of the beneficiary stating that the obligor has failed to perform as required in the underlying contract. The ability of the contractor to depart from the terms of the bank guaranty as dictated by the owner is a function of the negotiating power between the parties (and the relevant bank). At the present time, several Hungarian banks are involved in a project to standardize the form of defects liability guaranty which they will issue. Copies of these forms are attached to this report as Exhibit F.

Apart from the general provisions of Hungarian law applicable to contracts and security, there are no legal requirements for defects guaranties. The form of the guaranty is not regulated. They are not required by law in public tendering or in any other type of construction such as residential construction. Similarly, Hungarian law has no special provisions regarding retention.

The financial arrangements (i.e., reimbursement agreements, collateral security) between the bank and its contractor-client are the same as those summarized in the performance security section above.

The failure of building suppliers to honor warranty obligations is one of the major problems in the Hungarian residential building sector today. Certain developers of residential property (in particular Hungary's largest residential builder, Országos Takarékpénztár (OTP)) have, over a period of years, accumulated massive liabilities in connection with warranty claims. The major source of the problem is that developers or contractors are called upon by homeowners to perform warranty repairs during the period following acceptance by the developer and the contractor or developer must then turn to the suppliers of materials or services under the warranties granted by the latter. However, very often, smaller suppliers of construction materials or services in the construction process either fail or are simply unable to perform their warranty obligations, leaving the liability for such obligations with the contractor or developer.

Some of the structural economic causes for accumulation of such liabilities in Hungary seem to be resolving themselves through the transition of the Hungarian economy to a market economy. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action

beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.6 European and American Law and Practice**

### **12.6.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.8 European and American Law and Practice**

### **12.8.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.10 European and American Law and Practice**

### **12.10.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **Consequence of Acceptance**

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## **12.12 European and American Law and Practice**

### **12.12.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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### **Consequence of Acceptance**

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## **12.14 European and American Law and Practice**

### **12.14.2 Acceptance of Work**

#### **Definition of Acceptance**

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.16 European and American Law and Practice**

### **12.16.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.18 European and American Law and Practice**

### **12.18.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.



In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.20 European and American Law and Practice**

### **12.20.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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## **12.22 European and American Law and Practice**

### **12.22.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.24 European and American Law and Practice**

### **12.24.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.26 European and American Law and Practice**

### **12.26.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.28 European and American Law and Practice**

### **12.28.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.30 European and American Law and Practice**

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role

of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.32 European and American Law and Practice**

### **12.32.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

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### **Procedure for Acceptance**

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## **12.34 European and American Law and Practice**

### **12.34.2 Acceptance of Work**

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## **12.36 European and American Law and Practice**

### **12.36.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.38 European and American Law and Practice**

### **12.38.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.40 European and American Law and Practice**

### **12.40.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.42 European and American Law and Practice**

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was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.44 European and American Law and Practice**

### **12.44.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.46 European and American Law and Practice**

### **12.46.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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### **Procedure for Acceptance**

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## **12.48 European and American Law and Practice**

### **12.48.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.50 European and American Law and Practice**

### **12.50.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.52 European and American Law and Practice**

### **12.52.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.54 European and American Law and Practice**

### **12.54.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.56 European and American Law and Practice**

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice



periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.58 European and American Law and Practice**

### **12.58.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.60 European and American Law and Practice**

### **12.60.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.62 European and American Law and Practice**

### **12.62.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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### **Consequence of Acceptance**

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## **12.64 European and American Law and Practice**

### **12.64.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.66 European and American Law and Practice**

### **12.66.2 Acceptance of Work**

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## **12.68 European and American Law and Practice**

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.70 European and American Law and Practice**

### **12.70.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.72 European and American Law and Practice**

### **12.72.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for



defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.74 European and American Law and Practice**

### **12.74.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.76 European and American Law and Practice**

### **12.76.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.78 European and American Law and Practice**

### **12.78.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.80 European and American Law and Practice**

### **12.80.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.82 European and American Law and Practice**

### **12.82.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of

substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.84 European and American Law and Practice**

### **12.84.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.86 European and American Law and Practice**

### **12.86.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.88 European and American Law and Practice**

### **12.88.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.90 European and American Law and Practice**

### **12.90.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.92 European and American Law and Practice**

### **12.92.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.94 European and American Law and Practice**

### **12.94.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.



### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to

be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.96 European and American Law and Practice**

### **12.96.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

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## **12.98 European and American Law and Practice**

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## **12.100 European and American Law and Practice**

### **12.100.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **Consequence of Acceptance**

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## **12.102 European and American Law and Practice**

### **12.102.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.104 European and American Law and Practice**

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y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.108 European and American Law and Practice**

### **12.108.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.110 European and American Law and Practice**

### **12.110.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The



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### **Procedure for Acceptance**

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periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.112 European and American Law and Practice**

### **12.112.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.114 European and American Law and Practice**

### **12.114.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.116 European and American Law and Practice**

### **12.116.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.118 European and American Law and Practice**

### **12.118.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.120 European and American Law and Practice**

### **12.120.2 Acceptance of Work**

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

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of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.122 European and American Law and Practice**

### **12.122.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.124 European and American Law and Practice**

### **12.124.2 Acceptance of Work**

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## **12.126 European and American Law and Practice**

### **12.126.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.128 European and American Law and Practice**

### **12.128.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.130 European and American Law and Practice**

### **12.130.2 Acceptance of Work**

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure

was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.134 European and American Law and Practice**

### **12.134.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.136 European and American Law and Practice**

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## **12.138 European and American Law and Practice**

### **12.138.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.140 European and American Law and Practice**

### **12.140.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.142 European and American Law and Practice**

### **12.142.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.144 European and American Law and Practice**

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## **12.146 European and American Law and Practice**

### **12.146.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice

periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.148 European and American Law and Practice**

### **12.148.2 Acceptance of Work**

#### **Definition of Acceptance**



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## **12.150 European and American Law and Practice**

### **12.150.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.152 European and American Law and Practice**

### **12.152.2 Acceptance of Work**

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## **12.154 European and American Law and Practice**

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.160 European and American Law and Practice**

### **12.160.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

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## **12.162 European and American Law and Practice**

### **12.162.2 Acceptance of Work**

#### **Definition of Acceptance**

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defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.164 European and American Law and Practice**

### **12.164.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.166 European and American Law and Practice**

### **12.166.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.168 European and American Law and Practice**

### **12.168.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.170 European and American Law and Practice**

### **12.170.2 Acceptance of Work**

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.172 European and American Law and Practice**

### **12.172.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of

substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.174 European and American Law and Practice**

### **12.174.2 Acceptance of Work**

#### **Definition of Acceptance**

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of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

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## **12.176 European and American Law and Practice**

### **12.176.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.178 European and American Law and Practice**

### **12.178.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.



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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.180 European and American Law and Practice**

### **12.180.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.182 European and American Law and Practice**

### **12.182.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.184 European and American Law and Practice**

### **12.184.2 Acceptance of Work**

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.186 European and American Law and Practice**

### **12.186.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.188 European and American Law and Practice**

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## **12.190 European and American Law and Practice**

### **12.190.2 Acceptance of Work**

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## **12.192 European and American Law and Practice**

### **12.192.2 Acceptance of Work**

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## **12.194 European and American Law and Practice**

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.198 European and American Law and Practice**

### **12.198.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

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## **12.200 European and American Law and Practice**

### **12.200.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice



periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.202 European and American Law and Practice**

### **12.202.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.204 European and American Law and Practice**

### **12.204.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.206 European and American Law and Practice**

### **12.206.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.208 European and American Law and Practice**

### **12.208.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.210 European and American Law and Practice**

### **12.210.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role

of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.212 European and American Law and Practice**

### **12.212.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.214 European and American Law and Practice**

### **12.214.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.216 European and American Law and Practice**

### **12.216.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for



defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.218 European and American Law and Practice**

### **12.218.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.220 European and American Law and Practice**

### **12.220.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.222 European and American Law and Practice**

### **12.222.2 Acceptance of Work**

#### **Definition of Acceptance**

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure



was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.224 European and American Law and Practice**

### **12.224.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.226 European and American Law and Practice**

### **12.226.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.228 European and American Law and Practice**

### **12.228.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

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## **12.230 European and American Law and Practice**

### **12.230.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.232 European and American Law and Practice**

### **12.232.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.234 European and American Law and Practice**

### **12.234.2 Acceptance of Work**

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.236 European and American Law and Practice**

### **12.236.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice

periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.238 European and American Law and Practice**

### **12.238.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.240 European and American Law and Practice**

### **12.240.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.242 European and American Law and Practice**

### **12.242.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.244 European and American Law and Practice**

### **12.244.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.246 European and American Law and Practice**

### **12.246.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.248 European and American Law and Practice**

### **12.248.2 Acceptance of Work**

#### **Definition of Acceptance**

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.250 European and American Law and Practice**

### **12.250.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

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### **Procedure for Acceptance**

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## **12.252 European and American Law and Practice**

### **12.252.2 Acceptance of Work**

#### **Definition of Acceptance**

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defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.254 European and American Law and Practice**

### **12.254.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.256 European and American Law and Practice**

### **12.256.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.258 European and American Law and Practice**

### **12.258.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.260 European and American Law and Practice**

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.



y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.262 European and American Law and Practice**

### **12.262.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of

substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.264 European and American Law and Practice**

### **12.264.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.266 European and American Law and Practice**

### **12.266.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.268 European and American Law and Practice**

### **12.268.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

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## **12.270 European and American Law and Practice**

### **12.270.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.272 European and American Law and Practice**

### **12.272.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.274 European and American Law and Practice**

### **12.274.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to

be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.276 European and American Law and Practice**

### **12.276.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.278 European and American Law and Practice**

### **12.278.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **12.280 European and American Law and Practice**

### **12.280.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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## **Consequence of Acceptance**

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## **12.282 European and American Law and Practice**

### **12.282.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.284 European and American Law and Practice**

### **12.284.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.286 European and American Law and Practice**

### **12.286.2 Acceptance of Work**

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to

determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.288 European and American Law and Practice**

### **12.288.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

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## **12.290 European and American Law and Practice**

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## **12.292 European and American Law and Practice**

### **12.292.2 Acceptance of Work**

#### **Definition of Acceptance**



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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.294 European and American Law and Practice**

### **12.294.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.296 European and American Law and Practice**

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### **Consequence of Acceptance**

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y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.300 European and American Law and Practice**

### **12.300.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role

of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.302 European and American Law and Practice**

### **12.302.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.304 European and American Law and Practice**

### **12.304.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to

determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.306 European and American Law and Practice**

### **12.306.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.



In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.308 European and American Law and Practice**

### **12.308.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice

periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.310 European and American Law and Practice**

### **12.310.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.312 European and American Law and Practice**

### **12.312.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.314 European and American Law and Practice**

### **12.314.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.316 European and American Law and Practice**

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## **12.318 European and American Law and Practice**

### **12.318.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.320 European and American Law and Practice**

### **12.320.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.322 European and American Law and Practice**

### **12.322.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.324 European and American Law and Practice**

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In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.326 European and American Law and Practice**

### **12.326.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.330 European and American Law and Practice**

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### **12.338.2 Acceptance of Work**

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The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.340 European and American Law and Practice**

### **12.340.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.342 European and American Law and Practice**

### **12.342.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.344 European and American Law and Practice**

### **12.344.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.346 European and American Law and Practice**

### **12.346.2 Acceptance of Work**

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## **12.348 European and American Law and Practice**

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## **12.350 European and American Law and Practice**

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.352 European and American Law and Practice**

### **12.352.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of



substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

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## **12.356 European and American Law and Practice**

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## **12.358 European and American Law and Practice**

### **12.358.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.360 European and American Law and Practice**

### **12.360.2 Acceptance of Work**

#### **Definition of Acceptance**

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y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.364 European and American Law and Practice**

### **12.364.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.366 European and American Law and Practice**

### **12.366.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.368 European and American Law and Practice**

### **12.368.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.370 European and American Law and Practice**

### **12.370.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

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## **12.372 European and American Law and Practice**

### **12.372.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.374 European and American Law and Practice**

### **12.374.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.376 European and American Law and Practice**

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to

determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.378 European and American Law and Practice**

### **12.378.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

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### **Procedure for Acceptance**

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In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.380 European and American Law and Practice**

### **12.380.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.382 European and American Law and Practice**

### **12.382.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.384 European and American Law and Practice**

### **12.384.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.386 European and American Law and Practice**

### **12.386.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.388 European and American Law and Practice**

### **12.388.2 Acceptance of Work**

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.390 European and American Law and Practice**

### **12.390.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.



In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.392 European and American Law and Practice**

### **12.392.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.394 European and American Law and Practice**

### **12.394.2 Acceptance of Work**

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## **12.396 European and American Law and Practice**

### **12.396.2 Acceptance of Work**

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### **Procedure for Acceptance**

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## **12.398 European and American Law and Practice**

### **12.398.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.400 European and American Law and Practice**

### **12.400.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.402 European and American Law and Practice**

### **12.402.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure

was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.404 European and American Law and Practice**

### **12.404.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.



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## **12.406 European and American Law and Practice**

### **12.406.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.408 European and American Law and Practice**

### **12.408.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.410 European and American Law and Practice**

### **12.410.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.412 European and American Law and Practice**

### **12.412.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.414 European and American Law and Practice**

### **12.414.2 Acceptance of Work**

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.416 European and American Law and Practice**

### **12.416.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.418 European and American Law and Practice**

### **12.418.2 Acceptance of Work**

#### **Definition of Acceptance**

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.420 European and American Law and Practice**

### **12.420.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.422 European and American Law and Practice**

### **12.422.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.424 European and American Law and Practice**

### **12.424.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.426 European and American Law and Practice**

### **12.426.2 Acceptance of Work**

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.428 European and American Law and Practice**

### **12.428.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.



The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.430 European and American Law and Practice**

### **12.430.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

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## **12.432 European and American Law and Practice**

### **12.432.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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### **Consequence of Acceptance**

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## **12.434 European and American Law and Practice**

### **12.434.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.436 European and American Law and Practice**

### **12.436.2 Acceptance of Work**

#### **Definition of Acceptance**



The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.438 European and American Law and Practice**

### **12.438.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.440 European and American Law and Practice**

### **12.440.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.442 European and American Law and Practice**

### **12.442.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

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### **Procedure for Acceptance**

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## **12.444 European and American Law and Practice**

### **12.444.2 Acceptance of Work**

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## **12.446 European and American Law and Practice**

### **12.446.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.448 European and American Law and Practice**

### **12.448.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.450 European and American Law and Practice**

### **12.450.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

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### **Procedure for Acceptance**

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## **12.452 European and American Law and Practice**

### **12.452.2 Acceptance of Work**

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.454 European and American Law and Practice**

### **12.454.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.456 European and American Law and Practice**

### **12.456.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.458 European and American Law and Practice**

### **12.458.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.460 European and American Law and Practice**

### **12.460.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.462 European and American Law and Practice**

### **12.462.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.464 European and American Law and Practice**

### **12.464.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.466 European and American Law and Practice**

### **12.466.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.



Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to

determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving "natural" markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.468 European and American Law and Practice**

### **12.468.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.470 European and American Law and Practice**

### **12.470.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.472 European and American Law and Practice**

### **12.472.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

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be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.474 European and American Law and Practice**

### **12.474.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.476 European and American Law and Practice**

### **12.476.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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## **12.478 European and American Law and Practice**

### **12.478.2 Acceptance of Work**

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

## **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.480 European and American Law and Practice**

### **12.480.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.482 European and American Law and Practice**

### **12.482.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.484 European and American Law and Practice**

### **12.484.2 Acceptance of Work**

#### **Definition of Acceptance**

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## **12.486 European and American Law and Practice**

### **12.486.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for

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If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.488 European and American Law and Practice**

### **12.488.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.490 European and American Law and Practice**

### **12.490.2 Acceptance of Work**

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y. In particular, one of the reasons for the very large amount of such liabilities has been that during the socialist period, supply of certain types of construction materials or services was concentrated in the hands of few suppliers which were originally monopolies and later, successors to such monopolies. Failure of any one supplier could have serious financial consequences. Moreover, because such suppliers very often were state owned and/or dependent for survival upon direct or indirect subsidies in the construction process, their ultimate failure was more likely. However, the process of transformation to a market economy and related developments in the building industry have resulted in a multiplication of the number of suppliers of construction materials. General contractors and developers are able to diminish the risk of failure by obtaining supplies from many companies. Even though the situation appears to

be improving, it is clear that the gravity of the problem is such that it requires some action beyond leaving “natural” markets processes to solve it gradually. We have therefore made a recommendation concerning this problem in Section 6.3.3 below.

## **12.492 European and American Law and Practice**

### **12.492.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the "punch list") and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

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## **12.494 European and American Law and Practice**

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## **12.496 European and American Law and Practice**

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## **12.498 European and American Law and Practice**

### **12.498.2 Acceptance of Work**

#### **Definition of Acceptance**

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### **Procedure for Acceptance**

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## **12.500 European and American Law and Practice**

### **12.500.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of "acceptance" is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as "factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract." Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

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### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

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## **12.502 European and American Law and Practice**

### **12.502.2 Acceptance of Work**

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### **Procedure for Acceptance**

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In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

In Britain, the contractor requests that the engineer or architect designated for the project inspect the work. Simultaneously, it notifies the engineer or architect of defects which will be remedied after substantial completion (the list of defects is often referred to as the “punch list”) and should be excluded from the inspection. The engineer or architect has the discretion to determine substantial completion, and issues a certificate when substantial completion occurs. Although the standard form contract is silent on the point, the contractor may seek judicial review of the engineer or architect's decision.

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## **12.506 European and American Law and Practice**

### **12.506.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The

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## **12.508 European and American Law and Practice**

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## **12.510 European and American Law and Practice**

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## **12.512 European and American Law and Practice**

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The most widely used American form contract is promulgated by the American Institute of Architects. It establishes a procedure very similar to that used in the British documents, in which the architect plays the role of arbitrator (although the American document restricts the architect's discretion by defining substantial completion). The form is widely modified, however. The role

of architect as arbitrator is often eliminated and the owner determines substantial completion on request from the contractor. In either case, a contractor may go to court if it believes the decision-maker improperly refused substantial completion.

### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

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## **12.518 European and American Law and Practice**

### **12.518.2 Acceptance of Work**

#### **Definition of Acceptance**

The definition of “acceptance” is statutory in France, fixed by a high court decision in Germany and is left to the contract of the parties in Britain and the US. In Germany, the term (*Abnahme*) is defined by the high court as “factual acceptance by way of transfer of possession and combined with a declaration of the owner that he accepts the performance as fulfillment which is identical to what is required by the contract.” Partial acceptance is possible and the owner may accept and still reserve acceptance for uncompleted or nonconforming work. The German ordinance of binding regulations for construction contracts (*Verdingungsordnung für Bauleistungen*), or VOB, is an appendix to the German Civil Code which provides a set of contract provisions which parties are free to include as part of their contracts. The VOB is widely used in German contracts. Under the VOB, the owner may only refuse acceptance for defects which are material to the works. The Civil Code and the VOB require the contractor to achieve the quality of work required by the contract, but permit defects which do not diminish the value or usability of the works. The VOB requires testing of the works for conformity and industry standards.

Under French law, acceptance (*réception*) is defined as the act by which the owner declares its acceptance of the work. Acceptance may be qualified or unqualified.

The British and American systems generally use the term “substantial completion” or “practical completion” to trigger an allocation of liabilities among the parties and the commencement of the defects liability period. The term is generally defined in contracts, not the law.

In British standard form contracts, substantial or practical completion is often used but not defined. The engineer or architect has extensive arbitral authority in British contracts, and the determination of substantial or practical completion is left to the discretion of the engineer/architect. In standard form British contracts, the contractor can compel certification of substantial completion by the engineer or architect in some cases where the owner takes possession of the works prior to the true substantial completion.

Definitions of these concepts are more common in American contracts. The following provision is illustrative of those found in American contracts:

“Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.” (AIA Form A201-1987 (USA))

If the owner takes possession of the works prior to the true substantial completion, under the AIA contract it must reach agreement with the contractor concerning the commencement of the defects liability period.

### **Procedure for Acceptance**

The procedure for acceptance under German law is a formal process which begins with a notice and involves a meeting of all parties and a written record. At this meeting, if the work is accepted, the parties prepare a list of reservations to the acceptance. In the absence of an actual acceptance meeting or written objections from the owner, German law favors the contractor by stating that the works are deemed accepted 12 days after the date for completion in the contract.

In France, all parties must also be present at acceptance. Standard form French contracts for public and private works expand on the acceptance procedures required by the law (e.g., notice periods, meeting requirements, etc.). Acceptance can also occur as a judicial act. In this process, one of the parties appeals to the court, which designates an expert to determine whether the contractor's performance complies with the contract. The judge then ratifies the expert's decision by a judgment.

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## **12.520 European and American Law and Practice**

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## **12.522 European and American Law and Practice**

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## **12.524 European and American Law and Practice**

### **12.524.2 Acceptance of Work**

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### **Consequence of Acceptance**

In Germany and France, the consequence of acceptance is, among other things, the commencement of the statutory defects liability period. Additional defects liabilities described in French standard form contracts also commence on acceptance.

In Britain and the United States, the parties are free to determine the consequences of acceptance in their contracts. Widely used form contracts in both jurisdictions (including forms for public contracts in Britain) state that the defects liability period begins to run from substantial completion or the date the contractor was entitled to a certificate for substantial completion. Sometimes, the parties use "final acceptance" (the point at which all punch list items are completed to the satisfaction of the decision-maker) or some other related landmark as the starting point for the defect liability period. Final acceptance is used in the acquisition regulations of the US federal government as the start of the period for certain warranty obligations.

## **12.524.4 Liability of the Contractor for Defects**

### **Legal Basis for Defects Liabilities**

French and German laws create statutory liability for defects in the work. The parties are free to include additional liability provisions in their contracts. In the British and American systems, liabilities for defects in the work arise mainly in the contract, but there are also liabilities which arise from statute and common law.

### Scope and Duration of Liability

Under the German Civil Code, the defects liability period is five years for residential construction and one year for fixtures. The defects liability period is 2 years for all components under the VOB. The civil code warranty period for residential construction may be reduced, and parties typically agree to the VOB's 2-year period instead.

The French Civil Code establishes three types of warranty: "perfect performance", "good operation" and "decennial" warranties. As a result of perfect performance warranty, the contractor, at its cost, must remedy all defects identified by the owner at the time of acceptance and any defects which the owner discovers after acceptance for a period of one year after acceptance. The good operation warranty requires the contractor, at its cost, to guaranty the proper function of all components not covered by the decennial liability for a period of at least two years from acceptance. The decennial warranty only concerns **latent** defects, and only to the extent that they either: (1) render the works unfit for their purpose due to an alteration to one of their constitutive items (e.g., structure) or fixtures; or (2) compromise the strength of the works or its fixtures to the extent that the compromised element may not be dissociated from the building. The decennial warranty lasts for a period of ten years from acceptance. These warranties may not be eliminated or curtailed by contract. Further, where the decennial warranty is involved, the warranties of the parties set forth in the contract are inapplicable.

The British construction contract almost always defines the liability of the contractor. All "work of repair, amendment, reconstruction, rectification and making good of any defects of whatever nature," (ICE Conditions of Contract, 6th Edition Section 49(2)) or "defects, shrinkages or faults . . . which are due to materials or workmanship not in accordance with this contract or to frost occurring before Practical Completion of the Works" (JCT Contract-Private with Quantities 1980 Edition (with amendments through amendment 6 of 1988) Section 17.2) are covered by the defects warranty. The defect must be discovered and the contractor must be notified within 14 days of the expiration of the defects warranty period. The defects warranty period is established by the contract, but a one year period is typical. If notified within the relevant time period, the contractor must repair the defect at its own cost. Concerning the materials used in the construction, the common law, that is, the case law, implies **contract** warranties of fitness for intended use and reasonable quality. There is also a judicially implied warranty that the work will be performed in a good and workmanlike manner. Each of these implied warranties may be negated or modified by contract, but they are more frequently made explicit in the contract. A products liability statute imposes strict **tort** liability in certain circumstances. In residential construction, a special statute imputes a warranty of habitability and imposes **tort** remedies on the contractor for breach.

The American approach is similar to the British. The American Institute of Architects form contracts require the contractor to promptly correct, at its cost, all defects appearing within one year of substantial completion. This does not eliminate monetary liability for defects, which will continue until the statute of limitations runs. With respect to Federal Government contracts, acceptance eliminates the contractors' liability for patent defects subject to the contract provision requiring correction of defects during the first year after final acceptance. The government contractor, however, remains liable for latent defects and for fraud. Other warranties arise in the



various American states from both case law and statute. These laws are extraordinarily diverse and generalizations are difficult, but the following are descriptions of some of the present sources of liability for the contractor. A judicially implied warranty of habitability exists in some states concerning latent defects, and some states have enacted statutory warranties for residential construction (which may only be waived in extreme circumstances) with warranty periods for all defects of at least one year and warranty periods for latent defects for longer periods. These warranties differ from their British statutory cousin in that they provide only contract, not tort, remedies. The case law of some states also includes an implied warranty that the building will be erected in a workmanlike manner. This warranty has no time limit. Its scope is limited to latent defects only. Generally, disclaimers of implied warranties are permitted in American law but narrowly construed and disfavored. American products liability law provides a cause of action in tort for defects in goods, and it usually imposes strict liability.

### **Procedural Rules for Enforcement**

In the German system, the owner must prove the existence of a defect at acceptance and that the fault for the defect lies with the contractor. The contractor may argue that the owner waived its right to warranty if it knew of a defect and accepted the defect. The contractor may also argue that the defect did not exist at acceptance. An owner is entitled to recover or withhold three times the value of the cost of remedy of the defect according to a high court decision.

In France, the defect is presumed to exist at acceptance and the contractor must prove that it was not the cause of the damage. In practice, this means that the contractor must prove either that (1) the owner interfered in the work process of the contractor, (2) force majeure, and (3) interference by a third party. Liability under the decennial warranty is strict liability. Concerning the guaranty of perfect performance, the contractor may avoid liability if it can prove the damage was caused by normal usage. Lawsuits filed to enforce statutory rights must be brought within the statutory time frames. Under the guaranty of perfect performance, the contractor has an obligation to repair the defect.

The British system requires the owner to prove that the work of the contractor was defective or failed to comply with the requirements of the contract. In defense, the contractor can deny the defect or failure or assert contributory negligence, Acts of God, exceptional economic circumstances, and normal wear and tear. The owner must prove its case "on the balance of the probabilities." The period for bringing claims under contract warranties is limited to six years from acceptance for normal contracts and twelve years for contracts executed under seal. Tort actions for apparent defects may be brought within six years of acceptance and within three years of the date of discovery for latent defects. Damages for breach of contract warranties are limited to the cost of repair or the diminution in value of the work due to the defect. Tort remedies are based on the type of injury suffered. Courts will give effect to contract provisions which modify the rights of the parties to damages. Specific performance is disfavored as a remedy, and injunctions will only be issued if damages are an inadequate remedy.

The American law on these issues is substantially the same as British law. Although law varies from state to state, the level of proof required in all American civil trials is typically expressed as the "preponderance of the evidence." Another difference is that the duration of the

period in which the owner may bring a claim, and the starting point of that period, can vary drastically from state to state.

#### **12.524.6 Security for Defects Liability**

As stated above, under the German Manual for Public Offerings the contractor must provide a bank guaranty equal to 2 percent of the contract price to cover the defects liability period in public contracts. Security for defects liability in the form of a bank guaranty is not required in private contracts but is widely used in larger contracts. Retention is widely used in private contracts and are not statutorily required in public contracts. Typically, 5 percent is retained.

In France security for defects liability is a mixture of law and contract in the French system. The *Norme Francaise*, a widely-used form contract, cites the relevant French statute which establishes the procedure for management of defects liability security if the parties agree that such security must be provided. Under this regime, if post-acceptance security is required, it can be implemented through a retention or a guaranty. Typically, the amount of the security is 5 percent of the contract price.

In either case, absent a written objection from the owner, the security is released one year after the acceptance of the work. The security period is identical to the period of the guaranty of perfect performance.

It is important to note that retention, if used in France, must be paid to an independent third party. A bank guaranty, which must by law be unconditional, can only be issued by an issuer which appears on an approved list in a government decree. The relevant law prohibits contractual deviation from the requirements set out above.

Retention appears in the widely used British standard form civil works contract and the standard form building contract. In each case, the amount of retention (which in the civil works contract is limited to 5 percent of the price of the works for contracts under 500,000 pounds and 3 percent above that amount), is withheld from each invoice paid during the performance of the contract. Fifty percent of the retention is released after issuance of the certificate of substantial completion by the engineer or architect. The remaining 50 percent is released after either the expiration of the defects liability period or the issuance of the certificate of final performance by the engineer or architect. The amount retained is held by the owner in trust for the contractor.

The British do not have a special instrument to cover the defects liability period because the British performance security described above often remains in effect after substantial completion. Where it is valid through the point at which the work is complete in fact (or until the engineer or architect issues a certificate to that effect, depending on the terms of the bond), the defects liability period is effectively covered by security. No coverage exists where the surety is released on acceptance.

A new trend in British practice is the appearance of insurance which will insure the owner for a ten-year defects period similar to the French decennial latent defects warranty. The cost is

typically around 1 percent of the insured amount and the issuing insurance company requires that its representatives be present during the entire construction process. In residential construction, the National Home Builders' Corporation, an association formed by contractors, provides the owner and its successors an insurance-type guaranty of 10 years for structural defects in homes constructed by its members.

American standard form construction contracts generally say almost nothing on the issue of post-acceptance security. It is not common for any third party security (e.g., a bond or guaranty) to be furnished, and the only security commonly required is a retention extending beyond acceptance. The standard form AIA contract permits the parties to agree on retention, and anticipates that it will be withheld from regular progress payments and distributed in part after substantial completion and in part after correction of all defects, but it is silent on the details. In fixed price contracts with the federal government, the contracting officer (the government's representative) can retain up to 10 percent of any payment due the contractor if he is not satisfied with the performance. In general, the contracting officer must release the amount retained at substantial completion, but he may retain an amount which he believes is necessary to adequately protect the government concerning the punch list items.

As in Britain, the performance bond is used in lieu of the bank guaranty. The performance bond can remain in force during the contractual warranty period if the parties so agree. There is no third-party security other than the performance bond which is widely used in the United States to cover the defects liability period.

It bears noting that some states in the United States (Maryland is an example) have established funds for the purpose of meeting claims of residential property owners who have suffered loss from failure of certain contractors to perform work. In Maryland, a governmental institution called the "Home Improvement Commission" administers a fund which serves to compensate homeowners who have contracted for repairs that were not performed or are improperly performed. These funds are established by compulsory contributions by residential real estate contractors and allow property owners to make claims when a contractor is unable to perform, for example due to disappearance of the contractor. Although this model is not directly applicable to the problem of failure by builders to perform warranty claims, it could be easily adapted to this purpose: if each builder were required to contribute to such a fund, the fund could then be used to meet the claims of those builders which fail to perform work under warranty. Feasibility of such a model should be studied as a solution to the problems of failure of suppliers in Hungary to perform warranty work.

CHART 6.1

Acceptance

	Hungary	Germany	France	Great Britain	US
Where defined?	law	court decision	law	contract	contract
Procedural legal requirements	notice, meeting, written record, inspection, testing	notice, meeting, written record, testing	notice, meeting or judicial determination	none	none
Does acceptance start defects liability?	yes	yes	yes	depends on contract	depends on contract

CHART 6.2

Defects warranty

	Hungary	Germany	France	Great Britain	US
Origin	statute and contract	Civil Code, VOB, contract	statute and contract	statute, common law, contract	statute, common law, contract
Duration of liability	<ul style="list-style-type: none"> <li>- 3 year warranty for durable goods and general construction</li> <li>- 10 year warranty for office, residential and community use structures</li> <li>- 5 year warranty for fixtures for office, residential and community use structures</li> <li>- 3 year guaranty for residential construction</li> <li>- typically, 1 year contractual guaranty of all defects</li> <li>- tort liability</li> </ul>	<ul style="list-style-type: none"> <li>- 5 year warranty for residential construction</li> <li>- 1 year warranty for fixtures</li> <li>- 2 year warranty for all works (VOB)</li> </ul>	<ul style="list-style-type: none"> <li>- 1 year perfect performance</li> <li>- 2 years good operation</li> <li>- 10 years decennial</li> <li>- tort liability</li> </ul>	<ul style="list-style-type: none"> <li>- one year for all defects</li> <li>- warranties re: materials (fitness and quality)</li> <li>- warranty of habitability</li> <li>- tort law</li> </ul>	<ul style="list-style-type: none"> <li>- one year for all defects</li> <li>- warranties re: materials (fitness and quality)</li> <li>- warranty of habitability</li> <li>- tort law</li> <li>- warranty of construction in workmanlike manner</li> </ul>
May defects liability be reduced by agreement?	no	yes	no	usually	usually

CHART 6.3

Enforcement of Defects Liability

	Hungary	Germany	France	Great Britain	US
Who has the burden of proof?	owner for warranty, contractor for guaranty	owner	contractor	owner	owner
Remedies	repair/ replace damages, terminate contract, deduct cost of repairs	damages for cost of repair	repair by contractor or damages for cost of repair	damages for cost of repair, or repair by contractor	damages for cost of repair or loss of value, repair by contractor

CHART 6.4

Post-Acceptance Security

	Hungary	Germany	France	Great Britain	US
Is retention widely used?	yes	yes	yes	yes	yes
Is it ever required by law?	no	no	no	no	public contracts
What is Typical amount?	up to 10%	up to 5%	5%	up to 10%	up to 10%
When is it released?	end of defects period or part at acceptance and remainder at end of defects period	end of defects period	one year after acceptance	1/2 at acceptance 1/2 at final completion	varies
Is third party post-acceptance security widely used?	yes	yes	yes	part of performance security	part of performance security
Is it required?	no	public contracts	no	N/A	N/A
What is typical amount? When released?	- 5% - 1-3 years after acceptance	- 2% - end of defects period	- 5% - 1 year after acceptance	N/A N/A	N/A N/A

## **14 Conclusions**

Throughout this report, we have presented general proposals for action to reinforce certain aspects of the Hungarian construction bonding and warranty scheme. However, to be instituted, the impetus for the proposals must come from within the Hungarian construction industry or from the responsible Hungarian Ministries. No ready made forum currently exists in Hungary to promote these proposals. In order both to gauge the degree of interest in such proposals and better identify the parties or institutions which could most effectively act as a catalyst for such revisions, we believe a working group including the Ministry of Industry and Trade and, due to its involvement in the preparation of a new public procurement statute, the Ministry of Finances, should be established. The preparers of this report would be available to participate in any such working group, both in elucidating the comparative examples of the countries concerned here and in helping to develop the appropriate legislative formulae for the proposals concerned.



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## **Exhibit C - The State of the Hungarian Construction Industry**

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## **Exhibit D - American Performance Bonds**

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## **Exhibit E - American Payment Bonds**

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## **Exhibit F - Hungarian Forms of Bank Guaranties**

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